

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 05/2015)

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

United States Courts  
Southern District of Texas  
FILED

APR 19 2019

David J. Bradley, Clerk of Court

David Carl Smith # 2049147  
Plaintiff's Name and ID Number

Hightower Unit  
Place of Confinement

CASE NO. \_\_\_\_\_  
(Clerk will assign the number)

v.

Gary L. Ferguson, 1697 FM 980, Huntsville, TX.  
Defendant's Name and Address

Jerry P. Underwood, 1697 FM 980 Huntsville, TX.  
Defendant's Name and Address

Texas Department of Criminal Justice, 1697 FM 980 Huntsville, TX.  
Defendant's Name and Address  
(DO NOT USE "ET AL.")

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INSTRUCTIONS - READ CAREFULLY

NOTICE:

**Your complaint is subject to dismissal unless it conforms to these instructions and this form.**

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACKSIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

**FILING FEE AND *IN FORMA PAUPERIS* (IFP)**

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$50.00 for a total fee of **\$400.00**.
2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.
3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or a initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$50.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)
4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

**CHANGE OF ADDRESS**

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE OF THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

**I. PREVIOUS LAWSUITS:**

- A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? \_\_\_ YES XX NO
- B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
  1. Approximate date of filing lawsuit: \_\_\_\_\_
  2. Parties to previous lawsuit:
 

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_
  3. Court: (If federal, name the district; if state, name the county.) \_\_\_\_\_
  4. Cause number: \_\_\_\_\_
  5. Name of judge to whom case was assigned: \_\_\_\_\_
  6. Disposition: (Was the case dismissed, appealed, still pending?) \_\_\_\_\_
  7. Approximate date of disposition: \_\_\_\_\_

II. PLACE OF PRESENT CONFINEMENT: Hightower Unit

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted all steps of the institutional grievance procedure? XXX YES     NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: David Carl Smith # 2049147, 902 FM 686, Dayton, TX. 77535

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Sergeant Gary L. Ferguson, Texas Department of Criminal Justice,  
Ellis Unit 1697 FM 980 Huntsville, TX. 77343

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

He dropped my typewriter and it broke in several places, and damaged the carriage.

Defendant #2: Jerry P. Underwood, Supervisor for the factory, Ellis Unit 1697 FM 980  
huntsville, TX. 77343

Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.

She is the one who ordered the typewriter to be placed in the scanner when it was  
not needed due to the typewriter being CLEAR and seethrough.

Defendant #3: Texas Department of Criminal Justice. Ellis Unit 1697 FM 980, Huntsville

Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.

It was a anual shakedown that was the cause of this and place it was damaged.

Defendant #4: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

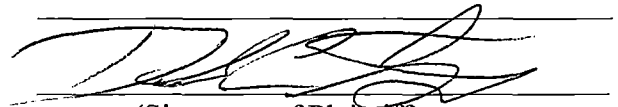


C. Has any court ever warned or notified you that sanctions could be imposed? \_\_\_\_\_ YES ~~XXX~~ NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): \_\_\_\_\_
2. Case number: \_\_\_\_\_
3. Approximate date warning was issued: \_\_\_\_\_

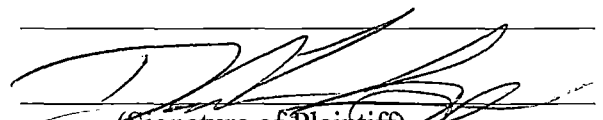
Executed on: April 15th, 2019  
DATE

  
(Signature of Plaintiff)

### PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this 15th day of April, 20 19.  
(Day) (month) (year)

  
(Signature of Plaintiff)

**WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.**





## Texas Department of Criminal Justice

# STEP 1

## OFFENDER GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2019053960  
 Date Received: DEC 21 2018  
 Date Due: 1-30-19  
 Grievance Code: 515  
 Investigator ID #: 2007  
 Extension Date: \_\_\_\_\_  
 Date Retd to Offender: 08 JAN 2019

Offender Name: David Carl Smith TDCJ # 2049147  
 Unit: ELLIS UNIT Housing Assignment: G-15-2-05 BV  
 Unit where incident occurred: ELLIS UNIT

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Wardens Strong, Jenkins; Mrs. Scott; Sgt. Ferguson, et al. When? 12/18/18 - 12/20/18

What was their response? None from Admin nor property from i-60's

What action was taken? Nothing

DEC 21 2018

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

In accordance with the 1996 Prison Litigation Reform Act, Section 1983, I have tried to resolve this matter with the administration. I am therefore filing a formal complaint for a suit claim on property damage by an officer of the Texas Department of Criminal Justice (TDCJ), namely Gary L. Ferguson, Sgt.; Jerry P. Underwood, Bus Bam; Wardens Strong, Jenkins, and et al.; and the Texas Department of Criminal Justice. On December 18th, 2018 after 12 noon, in the North Gym, the officers had me carry my property there under orders from the wardens for the annual Shakedown. While there, Mrs. Jerry P. Underwood told the officer at my table to take my typewriter to the X-Ray Scanner and have Sgt. Gary L. Ferguson to scan it. As they put my typewriter on the roller, they was not paying attention and let the machine roll it out the end and crash to the floor shattering the keyboard and breaking the pagefeed lever, and also making the typesetting off alignment, which makes it hard to print correctly now. After the incident the Sgt. took me to property and then Mrs. Scott called the warden to ask permission to replace it. It was approved, then she went into the storeroom and tried to pass me a GDDR ONE which also was broken in multiple places. I was expecting a NEW ONE. My typewriter is BRAND NEW. I just purchased the machine on August 2, 2018 on this unit, less than 120 days ago. And I kept it in the plastic still with a dust cover. Which Mrs. Jerry P. Underwood threw away without asking me anything. I bring this suit against the state of Texas due to it being under their supervision. I also bring it against Mrs. Underwood due to her telling them to scan it, when it is a SEE THROUGH CLEAR PLASTIC DEVICE which needed NO SCANNING. Cody v. Leapley 476 NW 2d 257, 260. To Administration for the authorizing the shakedown, Price v. Harris 727 F2d 427, 428. The officer was clearly negligent in damaging property- Marshall v. Norwood 741 F2d 761, 763 (5th cir 1984), also Loftin v. Thomas 681 F2d 364, 365 (5th cir 1982). There is "PROXIMATE CAUSE" to this incident, and with CAMERAS within the Gym to record this incident. Also over 20 officers were present along with over 40 inmates when it occurred. The officer was UNDER COLOR OF STATE LAW doing his job while it occurred which brings TDCJ into question. I have sent a letter to the Wardens to offer a settlement to allow them to cover the cost of damage or replace it with a NEW typewriter. I also offered that if they allow me to purchase a new printwheel I would cover the damages cost myself. since there was no response I consider the offer denied, and therefore I will seek full cover of expenses for all

repairs and shipping to service center. The property officer also has refused to return my property papers of the proof of ownership. I had attempted multiple times to get it, also had a Capt. call for it with no response. Maintenance had attempted to fix the keyboard, but did not fix the alignment or broken lever. These must be done by a Switzer service center. After I returned to my cell with it a officer followed me per Sgt. Ferguson to see if it worked and was aware that the alignment was off and there was no way to correct the broken lever since the piece was broken off completely.

DEC 21 2018

## Action Requested to resolve your Complaint.

*No Reprisal!!!!*  
I want my typewriter fixed or replaced with a brand new one like the one that they broke. I want IDJ et al to cover all expenses for this, and attorney and court fees when brought to court, also paid for by the State and S agents.

Offender Signature: 

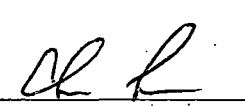
DEC 21 2018

Date: 12/21/18

Grievance Response:

An investigation into your claim has been conducted. Records indicate that this issue was informally resolved with a property settlement agreement offered to you on 12/18/18. No further action is warranted by this office.

ASST. WARDEN  
C. LACOX

Signature Authority: 

Date: 1/7/19

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. \*
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments. \*
- ☐ 5. No documented attempt at informal resolution. \*
- ☐ 6. No requested relief is stated. \*
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. \*
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance # \_\_\_\_\_
- ☐ 10. Illegible/Incomprehensible. \*
- ☐ 11. Inappropriate. \*

UGI Printed Name/Signature: \_\_\_\_\_

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: \_\_\_\_\_

I-127 Back (Revised 11-2010)

## OFFICE USE ONLY

Initial Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

2<sup>nd</sup> Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

MAR 27 2019



**Texas Department of Criminal Justice**  
**STEP 2**  
**OFFENDER**  
**GRIEVANCE FORM**

**OFFICE USE ONLY**

Grievance #: 2019053966  
 UGI Recd Date: 11 JAN 2019  
 HQ Recd Date: JAN 16 2019  
 Date Due: 02/20/2019  
 Grievance Code: 515  
 Investigator ID#: I-1781  
 Extension Date: 4/1/18

Offender Name: David Carl Smith TDCJ # 2049147Unit: ELLIS UNIT Housing Assignment: 15-2-05Unit where incident occurred: ELLIS UNITStep 1 # 2019053966

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

ACCORDING TO THE WARDEN, MR. C. LACOX, ON THE STEP 1 GRIEVANCE RETURN, ~~IT STATES THAT THE ISSUE WAS INFORMALLY RESOLVED, THAT IS NOT CORRECT.~~ AS I STATED IN THE STEP ONE WHICH THE WARDEN OBVIOUSLY DID NOT READ, IT PLAINLY AND CLEARLY SAYS THAT THE PROPERTY OFFICER TRIED TO EXCHANGE MY BRAND NEW TYPEWRITER THAT WAS DROPPED AND BROKEN, FOR AN OLD AND BROKEN ONE THAT THEY HAD IN STORAGE THAT WAS A CONFISCATED DEVICE THAT HAD MORE PROBLEMS THAN MY DEVICE THAT WAS DROPPED. IN ORDER FOR ANYONE OF A SANE MIND TO ACCEPT SUCH A DEAL IS UNTHINKABLE. AS STATED IN THE STEP ONE, I REFUSED TO ACCEPT THAT TRADE FOR MY BRAND NEW TYPEWRITER, A PERSON WOULD HAVE TO BE MENTALLY ILL TO EVEN CONSIDER SUCH A OFFER. TDCJ IS ONE HUNDRED PERCENT RESPONSIBLE FOR THE DESTRUCTION OF MY TYPEWRITER, AND THEY ARE ONE HUNDRED PERCENT RESPONSIBLE FOR THE FIXING COST OF MINE OR A REPLACEMENT WITH A BRAND NEW TYPEWRITER WHICH IS WHAT I HAD WHEN THEY DROPPED IT. IN ORDER FOR ME TO ACCEPT ANY OFFER, IT WOULD HAVE TO BE OF EQUAL OR GREATER VALUE TO THE ONE I SPENT 225.00 DOLLARS ON. AND I JUST HEARD BACK FROM THE SWINTEC COMPANY AND I HAVE A COPY OF THE INVOICE FOR THEM TO DO THE REPAIRS AND THEY ARE EXPENSIVE. IT IS 89.00 FOR A BENCH FEE, 39.00 FOR SHIPPING AND HANDLING IN A CUSTOM BOX FOR IT, AND ANOTHER 50.00 PLUS FOR THE PARTS AND REPAIRS. SO THAT IS \$170.00 AT A MINIMUM FOR THEM TO FIX MY TYPEWRITER. SO TDCJ CAN EITHER PAY THE 170.. (CHEAPEAST OPTION) OR THEY CAN JUST GIVE ME ONE OFF THE COMMISSARY, BRAND NEW TO REPLACE MY NEW ONE THEY (tdcj) DESTROYED. OTHERWISE WHEN I FILE THIS IN THE FEDERAL COURTS, IT WILL COST 350.00 FOR COURT FEES, ANOTHER 225.00 FOR A NEW TYPEWRITER, AND ANY AND ALL OTHER FEES IF MY ATTORNEY IS ASSIGNED FOR THE CASSE. THAT WILL COST TDCJ AND OR OFFICER FERGUSON, OVER 575.00 MINIMUM SINCE IN A CIVIL SUIT, YOU WILL HAVE TO COMPENSATE ME FOR ALL FEES INCURED DURING THE TRIAL .... MY TYPEWRITER IS SPECIAL TO ME SINCE I HAVE LOTS OF WORK TO DO, AND I WANT IT FIXED OR REPLACED WITH A NEW ONE OR THIS ONE FIXED WHERE I DON'T HAVE TO JERRY RIG IT TO FUNCTION PROPERLY. AS STATED, THIS IS ALL ON CAMERA, AND I HAVE OVER 100 WITNESSES AND YOUR STEP ONE RESPONSE PLAINLY SHOWS THAT TDCJ IS RESPONSIBLE. THERE WAS NO SETTLEMENT SINCE I REFUSED TO ACCEPT AN IRRATIONAL AND IMPROPER SETTLEMENT SINCE THEY CLEARLY TRIED TO PUT OFF GIVING ME A EVEN MORE DAMAGED MACHINE THAN THE ONE THEY DROPPED. THINK OF IT LIKE THIS, example: you just buy a brand new mercedes, and a man who works

I-128 Front (Revised 11-2010)

YOUR SIGNATURE IS REQUIRED ON BACK OF THIS FORM

(OVER)

Just because I am incarcerated should not allow TDCJ staff to abuse or destroy my property and never compensate it FAIRLY!

Appendix G



\*\*\* I have a copy of the property papers that show they took off the replacement sign. I refused the offer for the damaged one they trade to swindle me with... \*\*\* Will file with court papers PLRA Sec. 1983 for the state of Texas, i.e. TDCJ hits your car. and he offers to settle with you and give you an old beat up

Pinto or Rabbit for your BRAND NEW MERCEDES. Would you accept that trade for settlement? Or would you want Texas to fix or replace your new Mercedes??? Well, that is how I feel about my typewriter. I spent a lot of money on it and I want it fixed or replaced with a new one. That is all I will accept. Otherwise this goes to federal court.

\*\*\* NOIE: Proprietary evidence... I have more than enough to have action. I am trying to help you save money. Last chance

Offender Signature: [Signature]

Date: 1-9-19

Grievance Response:

Your complaint has been noted by this office. You were offered a property settlement on 12/18/18 and you accepted. By acceptance of the items listed on Appendix N, you agree to no longer hold the Texas Department of Criminal Justice liable, past, present or future, for the property mentioned in this claim. Your grievance has been resolved accordingly.

Offender Signature: [Signature]

Date: 3-18-19

Grievance Response:

Signature Authority: [Signature]

Date: 3-18-19

Returned because: \*Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.\*
- ☐ 3. Originals not submitted.\*
- ☐ 4. Inappropriate/Excessive attachments.\*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.\*

CGO Staff Signature: [Signature]

Offender Signature: [Signature]

Grievance Response:

Signature Authority: [Signature]

Returned because: \*Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.

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- ☐ 3. Originals not submitted.\*

### OFFICE USE ONLY

Initial Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

2<sup>nd</sup> Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Appendix G



David Carl Smith # 2049147  
Hightower Unit  
902 FM 686  
Dayton, TX. 77535

United States Courts  
Southern District of Texas  
FILED  
APR 19 2019  
David L. Bradley, Clerk of Court

U.S. District Court  
Southern District of Texas  
P.O. BOX 61010  
Houston, TX. 77208